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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
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11 MANUEL GUTIERREZ,
12 BOP #08652-298,

13 Plaintiff,

14 vs.

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16 SIX UNKNOWN NAMES AGENTS;
17 BARACK OBAMA, President of the
18 United States,

19 Defendants.

Civil No. 13cv1289 MMA (JMA)

**ORDER DISMISSING CIVIL
ACTION WITHOUT PREJUDICE
FOR FAILING TO PAY
FILING FEE REQUIRED
BY 28 U.S.C. § 1914(a) AND/OR
FAILING TO MOVE TO
PROCEED *IN FORMA PAUPERIS*
PURSUANT TO
28 U.S.C. § 1915(a)**

20 Plaintiff, currently detained at the Immigration and Customs Enforcement
21 Processing Center located in El Paso, Texas, and proceeding pro se, filed an illegible one-
22 page complaint entitled “Civil Rights Action with the Writ of Summons and Complaint”
23 “under 42 U.S.C. § 1983” (ECF No. 1) on June 3, 2013.¹

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25 ¹ On June 13, 2013, before this Court issued any Order whatsoever, Plaintiff also
26 filed a Notice of Appeal to the Ninth Circuit “from the decision (describe it) entered in
27 this action on the 10 day of June, 2013.” See ECF Doc. No. 2. Because there is no such
28 Order, Plaintiff’s appeal is obviously premature. Therefore, this Court retains jurisdiction
over the action. See *United States v. Garner*, 663 F.2d 834, 837 (9th Cir. 1981) (noting
that if “the deficiency in a notice of appeal, by reason of untimeliness, lack of essential
recitals, or reference to a nonappealable order, is clear to the district court, it may
disregard the purported notice of appeal and proceed with the case, knowing that it has
not been deprived of jurisdiction.”) (citing *Ruby v. Secretary of United States Navy*, 365

I. Failure to Pay Filing Fee or Request IFP Status

All parties instituting any civil action, suit or proceeding in any district court of the United States, except an application for writ of habeas corpus, must pay a filing fee of \$350. *See* 28 U.S.C. § 1914(a).² An action may proceed despite a party's failure to pay this filing fee only if the party is granted leave to proceed *in forma pauperis* ("IFP") pursuant to 28 U.S.C. § 1915(a). *See Andrews v. Cervantes*, 493 F.3d 1047, 1051 (9th Cir. 2007); *Rodriguez v. Cook*, 169 F.3d 1176, 1177 (9th Cir. 1999).

Plaintiff has not prepaid the \$400 in filing and administrative fees required to commence a civil action, nor has he submitted a Motion to Proceed IFP pursuant to 28 U.S.C. § 1915(a). Therefore, the case cannot yet proceed. *See* 28 U.S.C. § 1914(a); *Andrews*, 493 F.3d at 1051.

II. Conclusion and Order

For the reasons set forth above, the Court hereby:

(1) **DISMISSES** this action sua sponte without prejudice for failing to pay the \$400 civil filing and administrative fee or submit a Motion to Proceed IFP pursuant to 28 U.S.C. §§ 1914(a) and 1915(a); and

(2) **GRANTS** Plaintiff **forty five (45)** days leave from the date this Order is filed to: (a) prepay the entire \$400 civil filing and administrative fee in full; *or* (b) complete and file a Motion to Proceed IFP which includes a certified copy of his trust account statement for the 6-month period preceding the filing of his Complaint. *See* 28 U.S.C. § 1915(a)(2); S.D. CAL. CIVLR 3.2(b).³

F.2d 385, 388-89 (9th Cir. 1966) (en banc)).

² All parties filing civil actions *on or after May 1, 2013*, must pay an additional administrative fee of \$50. However, the additional \$50 administrative fee is waived if Plaintiff is granted leave to proceed IFP.

³ Plaintiff is cautioned that if he chooses to proceed further with this action either by paying the full \$400 civil and administrative filing fee required by 28 U.S.C. § 1914(a), or moving to proceed IFP, his Complaint, which is currently comprised of a single illegible paragraph of incomprehensible legal jargon seeking unspecified relief against unidentified "agents" and the President of the United States, will be screened and immediately dismissed as frivolous pursuant to 28 U.S.C. § 1915A(b) and 28 U.S.C. § 1915(e)(2)(b). *See Lopez v. Smith*, 203 F.3d 1122, 1126-27 (9th Cir. 2000) (en banc).

1 **IT IS FURTHER ORDERED** that the Clerk of the Court shall provide Plaintiff
2 with this Court's approved form "Motion and Declaration in Support of Motion to
3 Proceed *In Forma Pauperis*." If Plaintiff fails to either prepay the \$400 civil filing fee
4 or complete and submit the enclosed Motion to Proceed IFP within that time, this action
5 shall remain dismissed without prejudice and without further Order of the Court.

6 **IT IS SO ORDERED.**

7 DATED: June 17, 2013



Hon. Michael M. Anello
United States District Judge

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27 (noting that 28 U.S.C. § 1915(e) "not only permits but requires" the court to sua sponte
28 dismiss an *in forma pauperis* complaint that fails to state a claim); *see also Rhodes v. Robinson*, 621 F.3d 1002, 1004 (9th Cir. 2010) (discussing sua sponte screening required by 28 U.S.C. § 1915A(b) of all prisoner complaints).